



## FACT SHEET ON DISQUALIFICATION FROM MUNICIPAL DECISIONS PART 4: SOURCES OF GIFTS

The City's Ethics Ordinance includes laws that prohibit City Officials from influencing municipal decisions when those decisions are substantially likely to have a material financial effect on their economic interests. This fact sheet is one of a series of fact sheets designed to offer general conflict of interest guidance to City Officials who participate in making municipal decisions. This particular fact sheet is focused on conflicts involving the sources of gifts to a City Official. Keep in mind that the information offered in this fact sheet should not be considered a substitute for the actual language contained in the Ethics Ordinance.

- ❖ The Ethics Ordinance prohibits City Officials from participating in a municipal decision if it is reasonably foreseeable (i.e., substantially likely) that the decision will have a “material financial effect” on any person or entity that has given the official gifts totaling \$420 or more within the past twelve months.
- ❖ Note that the dollar threshold is subject to change January 1 of every odd-numbered year. For this reason, the \$420 threshold will likely be increased on January 1, 2011.
- ❖ Under these rules, for example, a City Official who accepts \$420 worth of San Diego Padres tickets over the previous twelve months from a particular company would likely be precluded from participating in a municipal decision involving that company.
- ❖ For a detailed discussion regarding what constitutes a “gift,” please refer to the Ethics Commission's “Fact Sheet on Gifts to City Officials,” which is available on the Commission's web site.
- ❖ Note that there is no exception for gifts from a governmental agency or charitable organization. If the County of San Diego, another city, or even an entity owned by the City such as SDDPC, gives you gifts that equal or exceed \$420, you may be legally precluded from participating in municipal decisions involving that entity.
- ❖ Although the Ethics Ordinance imposes a limit on gifts received within the same calendar year (\$420 as of 2009), keep in mind that the disqualification rules are based on any twelve month period, not a calendar year. For this reason, you could accept \$500 in gifts from the same person over a twelve month period without violating the gift limit rules if the gifts were appropriately spread out over two calendar years, but might still be disqualified from participating in a municipal decision.
- ❖ You should also be aware that some items are not considered “gifts” for purposes of gift limits (e.g., when another public agency pays for transportation and associated food and lodging), but are still considered “gifts” for purposes of disqualification. In other words, if the County of San Diego pays \$1,000 for airfare and lodging for you to attend a conference in Sacramento, you will not exceed the gift limits, but you may be precluded from participating in decisions involving the County for twelve months following that payment.
- ❖ Before you can determine whether or not a municipal decision will have a “material” (i.e., having a significant consequence) effect on a source of gifts, you must first identify how close the relationship is between the decision and the source of the gifts. In other words, you must determine whether the source of the gifts is “directly involved” or “indirectly involved” in the decision.

- ❖ A source of gifts is considered “directly involved” in a municipal decision when that source, either directly or through an agent:
  - ✓ initiates the proceeding in which the decision will be made by filing an application, claim, appeal, or similar request or;
  - ✓ is a named party in the decision, or is otherwise the subject of the decision. A person is the subject of a decision if the decision involves the issuance, renewal, approval, denial, or revocation of any license, permit, or other entitlement to, or contract with, the person.
- ❖ If the source of gifts is “directly involved,” then the financial effect of a municipal decision on the entity is deemed to be “material.” In such instances, there is no presumption that may be rebutted.
- ❖ If a source of gifts is not “directly involved” as described above, but will still be affected by a particular decision, then the source of gifts is considered “indirectly involved” in the decision. The financial effect of a municipal decision on a source of gifts that is “indirectly involved” depends on whether the source of income is a business entity, a non-profit entity, a governmental entity, or an individual. The larger the business entity or non-profit entity, the greater the impact the decision will need to be on that entity in order for the financial effect to be considered “material.” A decision that has a negligible financial impact on a large business entity, for example, could have a substantial impact on a small business. In other words, what is “material” to a small company might not be “material” to a large one.
- ❖ Please refer to the chart below for assistance in determining how much impact a municipal decision will need to have for the financial effect to be considered “material” to an indirectly involved business entity:

TYPE OF FOR-PROFIT BUSINESS ENTITY	IMPACT OF DECISION ON “INDIRECTLY INVOLVED” FOR-PROFIT BUSINESS ENTITY		
	Will increase or decrease the business entity's gross revenues for a fiscal year by:	Will cause entity to incur or avoid additional expenses or reduce or eliminate existing expenses for a fiscal year in the amount of:	Will increase or decrease the value of the business entity's assets or liabilities by:
Listed on the Fortune 500	\$10 million	\$2.5 million	\$10 million
Listed on the New York Stock Exchange	\$500,000	\$200,000	\$500,000
Had earnings before taxes of no less than \$2.5 million	\$500,000	\$200,000	\$500,000
Listed on the NASDAQ or American Stock Exchange	\$300,000	\$100,000	\$300,000
Had net income of no less than \$500,00, or earnings before taxes of no less than \$750,000	\$300,000	\$100,000	\$300,000
Any entity not covered above	\$20,000	\$5,000	\$20,000
Note: If more than one of the above categories is applicable, apply the one with the highest dollar threshold.			

Non-profit entities and governmental entities have different thresholds. Please refer to the chart on the following page to determine how much impact a municipal decision will need to have for the financial effect to be considered “material” to an “indirectly involved” non-profit or governmental entity:

GROSS ANNUAL RECEIPTS OF NON-PROFIT OR GOVERNMENTAL ENTITY	IMPACT OF DECISION ON “INDIRECTLY INVOLVED” NON-PROFIT OR GOVERNMENTAL ENTITY		
	Will increase or decrease the entity's gross receipts for a fiscal year by:	Will cause entity to incur or avoid additional expenses or reduce or eliminate existing expenses for a fiscal year in the amount of:	Will increase or decrease the value of the entity's assets or liabilities by:
\$400 million or more	\$1 million	\$250,000	\$1 million
More than \$100 million, less than \$400 million	\$400,000	\$100,000	\$400,000
More than \$10 million, less than or equal to \$100 million	\$200,000	\$50,000	\$200,000
More than \$1 million, less than or equal to \$10 million	\$100,000	\$25,000	\$100,000
More than \$100,000, less than or equal to \$1 million	\$50,000	\$12,500	\$50,000
\$100,000 or less	\$10,000	\$2,500	\$10,000

- ❖ There are different standards for individuals. If the source of the gifts is an individual who is “indirectly involved” in the municipal decision, the financial effect of the decision will be material if the decision will affect:
  - ✓ the individual's income, investments, or other tangible or intangible assets or liabilities (other than real property) by \$1,000 or more; or
  - ✓ the development potential, income potential, use, or neighborhood characteristics of the individual's real property interest.
- ❖ Whether or not it is reasonably foreseeable that a municipal decision will have a particular effect on a source of gifts is a determination that you must make yourself. The Ethics Commission does not act as a finder of facts when providing conflict of interest advice.
- ❖ Even if a municipal decision will have a reasonably foreseeable material financial effect on a source of gifts, you will not be disqualified from participating in that decision if you can establish that the decision will affect that entity or individual in a manner that is no different from the manner in which the decision will affect the public generally.
  - ✓ If the source of income is an individual, the “public generally” exception will apply if the decision also affects, in substantially the same manner, 10% or more of the City's residents (or of the district you represent, if applicable), or 5,000 individuals who are City residents.
  - ✓ If the source of gifts is a business entity or a non-profit entity, the “public generally” exception will apply if the decision also affects, in substantially the same manner, either 2,000 or 25% of all such entities in the City (or in the district you represent) so long as the effect is on entities composed of more than a single industry, trade, or profession.
  - ✓ If the source of gifts is a governmental entity, the “public generally” exception will apply if the decision will affect, in substantially the same manner, all members of the public under the jurisdiction of that governmental entity.
- ❖ If the municipal decision involves a contract, be sure you also review the Ethics Commission's “Fact Sheet on Financial Interests in a Contract.”

Determining whether or not you have a conflict of interest in a particular municipal decision can be a complicated matter. Do not hesitate to contact the Ethics Commission at (619) 533-3476 for additional assistance.